

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES G. WILSON,

Petitioner,

v.

HUGH WOLFENBARGER,

Respondent.

Case No. 09-13775

Honorable John Corbett O'Meara

**ORDER GRANTING RESPONDENT'S FEBRUARY 24, 2010
MOTION TO DISMISS WITHOUT PREJUDICE**

This matter came before the court on respondent Hugh Wolfenbarger's February 24, 2010 motion to dismiss petitioner Charles G. Wilson's September 4, 2009 application for writ of habeas corpus. No response was filed, and no oral argument was heard.

After Petitioner's application was filed under 28 U.S.C. § 1651, the court construed the petition as an application pursuant to 28 U.S.C. § 2255 and ordered responsive pleadings. Federal courts "shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). The essence of such an application is an attack on the legality of custody for the purpose of securing release from that custody. Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). By comparison, an action brought under 42 U.S.C. § 1983, "is a proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life, but not to the fact or length of his custody." Id. at 499.

In this case petitioner Wilson is not challenging his conviction or his sentence; rather, he claims that money was improperly withdrawn from his bank account during his incarceration.

Therefore, the court will deny his petition without prejudice so that he may bring his claim under an appropriate cause of action if he chooses to do so.

ORDER

It is hereby **ORDERED** that respondent Wolfenbarger's February 24, 2010 motion is **GRANTED** and that the petition is **DENIED WITHOUT PREJUDICE**.

s/John Corbett O'Meara
United States District Judge

Date: August 3, 2010

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, August 3, 2010, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager